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*Attorneys for Plaintiffs O.W. Bunker USA Inc.
and O.W. Bunker North America Inc.*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

----- X
O.W. BUNKER USA INC. and
O.W. BUNKER NORTH AMERICA INC.,

Plaintiffs,

v.

COSCO PIRAEUS,
I.M.O. NO. 9484364, HER ENGINES,
TACKLE, EQUIPMENT, AND
FURNISHINGS, *in rem*,

Defendant.

----- X

Docket No.

VERIFIED COMPLAINT

(Admiralty)

Plaintiffs O.W. BUNKER USA INC. and O.W. BUNKER NORTH AMERICA INC., by
and through their undersigned counsel, against Defendant COSCO PIRAEUS, I.M.O. NO.
9484364, HER ENGINES, TACKLE, EQUIPMENT, AND FURNISHINGS, *in rem*, allege and
plead as follows:

ADMIRALTY

1. This is a case of admiralty of maritime jurisdiction, as will more fully appear below, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil procedure.
2. Plaintiffs invoke Rule C of the Federal Rules of Civil Procedure, Supplemental Rules for Admiralty of Maritime Claims and Asset Forfeiture Actions.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 – 1333.
4. This Court is the proper venue pursuant to 28 U.S.C. § 1391.
5. Jurisdiction and venue are based on the presence of Defendant COSCO PIRAEUS, I.M.O. NO. 9484364, HER ENGINES, TACKLE, EQUIPMENT, AND FURNISHINGS, *in rem*, within this district.

PARTIES

6. At all material times, the Plaintiff O.W. BUNKER USA INC. (“OW USA”) was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Texas, with an office and principal place of business located at 2603 Augusta Drive, Suite 440, Houston, TX 77057.
7. On November 13, 2014, OW USA filed a Voluntary Petition under Chapter 11 in the United States Bankruptcy Court for the District of Connecticut. *In re O.W. Bunker USA Inc.*, U.S.D.C., Bank. D. Conn., Case No. 14-51722 (AHWS).
8. At all material times, the Plaintiff O.W. BUNKER NORTH AMERICA INC. (“OW NA”) was and still is a corporation duly organized and existing under and by virtue of the laws of

the State of Connecticut, with an office and principal place of business located at Two Stamford Plaza, 15th Floor, 281 Tresser Boulevard, Stamford, CT 06901.

9. On November 13, 2014, OW NA filed a Voluntary Petition under Chapter 11 in the United States Bankruptcy Court for the District of Connecticut. *In re O.W. Bunker North America Inc.*, U.S.D.C., Bank. D. Conn., Case No. 14-51721 (AHWS).
10. On information and belief, Defendant COSCO PIRAEUS, I.M.O. NO. 9484364, HER ENGINES, TACKLE, EQUIPMENT, AND FURNISHINGS, *in rem* (“COSCO PIRAEUS”), is an ocean-going vessel registered to sail under the flag of Hong Kong, China, and is now, or during the pendency of this action will be, within this district.
11. On information and belief, non-party Chimbusco Americas Inc. (“Chimbusco”), was and still is the owner, manager, officer, charterer, or authorized agent of the COSCO PIRAEUS, with an office located at the COSCO Building, 100 Lighting Way, Secaucus, NJ 07094.

FACTS

12. On October 21, 2014, Chimbusco entered into a contract with non-party O.W. BUNKER FAR EAST (S) PTE LTD EAST (“OW Far East”) for the sale, supply, and delivery of marine fuel oil to the COSCO PIRAEUS, to be delivered at the port of New York on or about October 28, 2014. (*See*: Exhibit A – OW Far East Sales Order Confirmation No. 197-19200).
13. The contract between Chimbusco and OW Far East expressly identified “O.W. Bunker USA Inc.” as “Supplier,” and therefore Chimbusco was aware of OW USA’s role as the contract supplier of marine fuel oil to the COSCO PIRAEUS pursuant to the aforementioned contract. (*See*: Exhibit A).

14. On October 21, 2014, OW Far East entered into a contract with OW USA for the sale, supply, and delivery of marine fuel oil to the COSCO PIRAEUS, to be delivered at the port of New York on or about October 28, 2014. (*See*: Exhibit B – OW Far East Purchase Order Confirmation No. 197-19200; Exhibit C – OW USA Sales Order Confirmation No. 205-10167).
15. The contract between OW Far East and OW USA identified “OWB NA PH New York” (i.e. OW NA) as “Supplier.” (*See*: Exhibit C).
16. On October 21, 2014, OW USA entered into a contract with OW NA for the sale, supply, and delivery of marine fuel oil to the COSCO PIRAEUS, to be delivered the port of New York on or about October 28, 2014. (*See*: Exhibit D – OW USA Purchase Order Confirmation No. 205-10167; Exhibit E – OW NA Sales Order Confirmation No. 211-10094).
17. The contract between OW USA and OW NA identified “OWB NA PH New York” (i.e. OW NA”) as “Supplier.” (*See*: Exhibit E).
18. On October 29-30, 2014, OW USA and OW NA did, in fact, sell, supply, and deliver marine fuel oil to the COSCO PIRAEUS at the port of Newark, pursuant to the aforementioned contracts. (*See*: Exhibit F – OW NA Bunker Delivery Receipt).
19. Pursuant to a contract of affreightment with OW USA or OW NA, the marine fuel oil was delivered to the COSCO PIRAEUS from non-party Harley Marine NY’s barge, CHABRIA SEA, at the direction of OW USA or OW NA.
20. OW NA’s Bunker Delivery Receipt was signed by the COSCO PIRAEUS’s Master or Chief Engineer, acting as authorized agents for the COSCO PIRAEUS, and stamped with the COSCO PIRAEUS’s official seal. (*See*: Exhibit F).

21. By signing and stamping OW NA's Bunker Delivery Receipt, the Master or Chief Engineer accepted the marine fuel oil for and on behalf of the COSCO PIRAEUS.
22. The marine fuel oil that was sold, supplied, and delivered by OW USA and OW NA was necessary as fuel for the COSCO PIRAEUS to sail worldwide and engage in commercial trade.
23. The COSCO PIRAEUS received the benefit of the marine fuel oil, is obligated to pay for the marine fuel oil, and is indebted to OW USA and OW NA for the marine fuel oil.
24. On October 29, 2014, OW Far East invoiced Chimbusco in the amount of \$934,227.26 in connection with the aforementioned sale, supply, and delivery of marine fuel oil to the COSCO PIRAEUS at the port of Newark on October 29-30, 2014. (*See*: Exhibit G – OW Far East Invoice No. 197-1410087).
25. On information and belief, despite due demand, Chimbusco has not paid OW Far East, and the full invoiced amount of \$934,227.26 remains due and owing to OW Far East.
26. On information and belief, OW Far East is in liquidation in Singapore.
27. On October 29, 2014, OW USA invoiced OW Far East in the amount of \$884,968.96 in connection with the aforementioned sale, supply, and delivery of marine fuel oil to the COSCO PIRAEUS at the port of Newark on October 29-30, 2014. (*See*: Exhibit H – OW USA Invoice No. 205-10183).
28. Despite due demand, OW Far East has not paid OW USA, and the full invoiced amount of \$884,968.96 remains due and owing to OW USA.
29. On October 28, 2014, OW NA invoiced OW USA in the amount of \$885,478.32 in connection with the aforementioned sale, supply, and delivery of marine fuel oil to the

COSCO PIRAEUS at the port of Newark on October 29-30, 2014. (*See*: Exhibit I – OW NA Invoice No. 211-10116).

30. Despite due demand, OW USA has not paid OW NA, and the full invoiced amount of \$885,478.32 remains due and owing to OW NA.

FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF OW USA

31. Pursuant to 46 U.S.C. § 31342, any entity “providing necessities to a vessel on the order of the owner or a person authorized by the owner has a maritime lien on the vessel.”

32. OW USA was the “Supplier” of marine fuel oil to the COSCO PIRAEUS pursuant to the contract between Chimbusco and OW Far East. (*See*: Exhibit A).

33. Marine fuel oil that is consumed by a vessel is a “necessary” pursuant to 46 U.S.C. § 31301(4).

34. Pursuant to 46 U.S.C. § 31341, a vessel’s owner, master, manager, officer, agent, or charterer is presumed to have the authority to procure necessities for a vessel.

35. Chimbusco, as owner, manager, officer, charterer, of agent of the COSCO PIRAEUS, is presumed to have authority to procure necessities for the COSCO PIRAEUS.

36. Accordingly, OW USA, who was known to Chimbusco as the contract “Supplier” of necessities, has a maritime lien on the COSCO PIRAEUS in the amount of \$884,968.96.

37. Pursuant to 46 U.S.C. § 31342(2), OW USA may bring a civil action *in rem* to enforce the lien.”

38. Pursuant to Rule C of the Federal Rules of Civil Procedure, Supplemental Rules for Admiralty of Maritime Claims and Asset Forfeiture Actions, OW USA may commence an action *in rem* to enforce its maritime lien.

39.

SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF OW NA

40. Pursuant to 46 U.S.C. § 31342, any entity “providing necessities to a vessel on the order of the owner or a person authorized by the owner has a maritime lien on the vessel.”
41. OW NA was the physical supplier of marine fuel oil to the COSCO PIRAEUS, as evidenced by OW NA’s Bunker Delivery Receipt. (*See*: Exhibit F).
42. Marine fuel oil is a “necessary” pursuant to 46 U.S.C. § 31301(4).
43. Pursuant to 46 U.S.C. § 31341, a vessel’s owner, master, manager, officer, agent, or charterer is presumed to have the authority to procure necessities for a vessel.
44. The COSCO PIRAEUS’s Master or Chief Engineer is presumed to have authority to procure necessities for the COSCO PIRAEUS.
45. Accordingly, OW USA, whose sale, supply, and delivery of marine fuel to the COSCO PIRAEUS was inspected and accepted by the COSCO PIRAEUS’s Master or Chief Engineer, has a maritime lien on the COSCO PIRAEUS in the amount of \$884,968.96.
46. Pursuant to 46 U.S.C. § 31342(2), OW NA may bring a civil action *in rem* to enforce the lien.”
47. Pursuant to Rule C of the Federal Rules of Civil Procedure, Supplemental Rules for Admiralty of Maritime Claims and Asset Forfeiture Actions, OW NA may commence an action *in rem* to enforce its maritime lien.

PRAYER

For the foregoing reasons, Plaintiffs OW USA and OW NA respectfully request that:

- A. A Warrant for Arrest of the COSCO PIRAEUS may issue;
- B. The COSCO PIRAEUS is seized by the U.S. Marshal and held as security against any judgment to be entered in this action;

- C. All person claiming any interest in the COSCO PIRAEUS may be cited to appear and answer this Verified Complaint;
- D. A judgment be entered in favor of Plaintiff OW USA in the amount of \$884,968.96 and OW NA in then amount of \$885,478.32 for their claims, with interest and costs;
- E. The COSCO PIRAEUS may be condemned and sold to pay the same; and
- F. Plaintiffs OW USA and OW NA may have such other and further relief as the Court may deem just and appropriate under the circumstances of the cause.

Dated: January 6, 2015

Respectfully Submitted,

MONTGOMERY MCCRACKEN
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*Attorneys for Plaintiffs O.W. Bunker USA Inc.
and O.W. Bunker North America Inc.*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

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O.W. BUNKER NORTH AMERICA INC.,

Plaintiffs,

v.

VESSEL COSCO PIRAEUS,
I.M.O. NO. 9484364, HER ENGINES,
TACKLE, EQUIPMENT, AND
FURNISHINGS,

Defendant.

----- X

Docket No.

VERIFICATION

(ADMIRALTY)

Pursuant to 28 U.S.C. § 1746 and LAMR (e)(3):

1. I, Timothy Semenoro, am an attorney for Plaintiffs O.W. BUNKER USA INC. ("OW USA")
and O.W. BUNKER NORTH AMERICA INC. ("OW NA");
2. I have read the Verified Complaint;
3. I am familiar with the facts alleged in the Verified Complaint;
4. The basis for my knowledge and belief concerning the facts alleged in the Verified
Complaint are my discussions with officers and employees of OW USA and OW NA and my
review of documents provided to me by OW USA and OW NA;
5. Due to the exigent circumstances, officers of OW USA and OW NA were not available to
verify the allegations contained in the Verified Complaint;
6. I am authorized to so verify the allegations in the Verified Complaint; and
7. I verify to the best of my knowledge, information, and belief under penalty of perjury under
the laws of the United States of America that the allegations in the Verified Complaint are
true and correct.

Executed on: January 6, 2015

Signed: _____
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*Attorney for Plaintiffs O.W. Bunker USA Inc.
and O.W. Bunker North America Inc.*

AFFIRMATION OF SERVICE

I, Robert E. O'Connor, declare under penalty of perjury that I instructed the U.S. Marshal Service to serve a copy of this Verified Complaint and supporting documents on the Defendant COSCO PIRAEUS, I.M.O. NO. 9484364, HER ENGINES, TACKLE, EQUIPMENT, AND FURNISHINGS, *in rem*.

Dated: January 6, 2015

By: _____
Robert E. O'Connor (*pro hac vice* pending)
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and O.W. Bunker North America Inc.*